

## KENNEBUNKPORT SHELLFISH CONSERVATION ORDINANCE

1. **Authority:** This Ordinance is enacted in accordance with 12 M.R.S.A. §6671.
2. **Purpose:** To establish a shellfish conservation program for the Town of Kennebunkport that will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means that may include:
  - A. Licensing
  - B. Limiting the number of shellfish harvesters
  - C. Restricting the time and area where digging is permitted
  - D. Limiting the minimum size of clams taken
  - E. Limiting the amount of clams taken daily by a harvester
3. **Shellfish Conservation Committee:** The Shellfish Conservation Program for the Town of Kennebunkport will be administered by the Shellfish Conservation Committee consisting of four (4) members to be appointed by the Selectmen of the Town of Kennebunkport for terms of one (1) year.

The Committee's responsibilities include:

- A. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish digging licenses to be issued
- B. Surveying each clam-producing area at least once each three years to establish size distribution and density, and annually estimating the status of the Town's shellfish conservation
- C. Submitting to the Board of Selectmen proposals for the expenditures of funds for the purpose of shellfish conservation
- D. Keeping this Ordinance under review and making recommendations for its amendments
- E. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources
- F. Recommending conservation closures and openings to the Board of Selectmen in conjunction with the Area Biologists of the Department of Marine Resources
- G. Submitting an annual report to the municipality and the Department of Marine Resources covering the above topics and all other committee activities

4. **Definitions**

- A. **Resident**: The term "resident" refers to a person who has been domiciled in this municipality for at least three months next prior to the time his claim of such residence is made.
- B. **Nonresident**: The term "nonresident" means anyone not qualified as a resident under this Ordinance.
- C. **Shellfish, Clams and Intertidal Shellfish Resources**: When used in the context of this Ordinance, the words "shellfish," clams," and "intertidal shellfish resources" mean soft shell clams (*Mya arenaria*).
- D. **Municipality**: Refers to the Town of Kennebunkport, Maine

5. **Licensing**: Municipal Shellfish Digging License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this Ordinance.

A. **Designation, Scope and Qualifications**:

- 1. **Resident Recreational Shellfish License**: The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself and his family.
- 2. **Nonresident Recreational Shellfish License**: The license is available to any person not a resident of this municipality and entitles the holder to dig and take not more than one peck of shellfish in any one day for the use of himself and his family.
- 3. **Daily Recreational Shellfish License**: The license is available to residents and non-residents of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself and his family. The license is good only for the date stated on the license.
- 4. **License must be signed**: The licensee must sign the license to make it valid.

B. **Application Procedure**: Any person may apply to the Town Clerk for the licenses required by this Ordinance on forms provided by the municipality.

- 1. **Contents of Application**: The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require.

2. Misrepresentation: Any person who gives false information on a license application will cause said license to become invalid and void.
- C. Fees: The fees for the licenses are as stated below and must accompany in full the application for the respective license. The Town Clerk shall pay all fees received to the Town Treasurer. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation and enforcement.
- Resident Recreational: \$10.00  
Nonresident Recreational: \$20.00  
Daily Recreational Shellfish License: \$5.00
- D. Limitation of Diggers: Clam resources vary in density and size distribution from year to year and over the limited soft clam-producing area of the Town. It is essential that the Town carefully husband its shellfish resources. Following the annual review of the Town's clam resources, its size distribution, abundance, and the Warden's reports, as required by Section 3, the Shellfish Conservation Committee in consultation with the D.M.R. Area Biologist will determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year.
1. Prior to January 1, the Committee shall report its findings and document recommendations for the allocation of commercial and recreational licenses to be made available for the following license-year to the Commissioner of Marine Resources for concurrence.
  2. After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to January 1, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.
  3. Notice of the number of licenses to be issued and the procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation that the Municipal Officers consider effective in reaching persons affected, not less than ten (10) days prior to the period of issuance. This information shall also be posted in the municipal offices until the period concludes.
  4. The Town Clerk shall issue licenses to residents and nonresidents as allocated (paragraph 5.D.1) from January 1 and until December 31.
- E. License Expiration Date: Ease license issued under authority of this Ordinance expires at midnight on the December 31st next following date of issuance. Each daily license issued under the authority of this Ordinance shall be valid only for the date stated on the license.

- F. Reciprocal Harvesting Privileges: Licenses from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of this license.
- G. License Fee Waiver: Recreational shellfish license fees will be waived for residents 65 years or older and 12 years or younger.
- H. Suspension/Revocation: A shellfish license issued under this Ordinance is subject to suspension as follows:
1. In cases where a court enforcement proceeding is brought under this Ordinance:
    - a. in the case of a first court judgment finding any violation, an automatic suspension of 30 days;
    - b. in the case of a second court judgment finding any violation against the same licensee, an automatic suspension of 60 days;
    - c. in the case of a third court judgment finding any violation against the same licensee, an automatic revocation of the existing license, and the person found in violation is prohibited from re-applying for a license under this Ordinance for one year.
  2. In cases where the Clam Warden believes that a licensee has violated this Ordinance, he may give notice to the licensee of such belief. If, after providing the licensee with an opportunity to rebut any evidence he has, the Clam Warden concludes that a violation has occurred, he may issue a notice of suspension not to exceed 30 days.
    - a. A licensee who has received a notice of suspension may appeal to the Board of Selectmen by filing a written request with the Town Clerk within seven (7) days of the day the Clam Warden's decision is rendered. Upon filing the request, the suspension is stayed pending the Board's decision.
    - b. The Board of Selectmen shall hear the appeal as soon as practicable and shall provide the appellant with at least 7 days written notice of hearing. It shall hear all the evidence and decide whether to uphold or reverse the decision of the Clam Warden. The rules of evidence do not apply.
6. Opening and Closing of Flats: The Municipal Officers, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendations of the Shellfish Conservation Committee and concurrence of the Department of Marine Resources Area Biologist that the status of shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Municipal Officers may call a public hearing, and shall send a copy of the notice

to the Department of Marine Resources. The decision of the Municipal Officers made after the hearing shall be based on findings of fact.

7. **Minimum Legal Size of Soft Shell Clams:** It is unlawful for any person to possess soft shell clams within the Town of Kennebunkport, County of York, that are less than two (2) inches in the longest diameter except as provided by Subsection B of this section.
  - A. **Definitions:**
    1. **Lot:** The word "lot" as used in this Ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container constitutes a separate lot.
    2. **Possess:** For the Purpose of this section, "possess" means dig, take, harvest, transport, or hold soft shell clam shellstock.
  - B. **Tolerance:** Any person may possess soft shell clams that are less than two (2) inches if they comprise less than 10% of any lot.
8. **Penalty:** A person who violates this Ordinance shall be punished as provided by 12 M.R.S.A. §6671 (10).
9. **Effective Date:** This Ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the municipality provided a certified copy of the Ordinance is filed with the Commissioner within twenty (20) days of its adoption.
10. **Period of Ordinance:** This Ordinance shall remain in effect until repealed by the Municipality or rescinded by the Commissioner of the Department of Marine Resources.
11. **Separability:** If any section, subsection, sentence or part of this Ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Ordinance.
12. **Repeal:** Any ordinance regulating the harvesting or conservation of shellfish in the Town and any provisions of any other Town ordinance that is inconsistent with this Ordinance is hereby repealed.

June 14, 2003 version